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SUBJECT: COMMISSIONER FOR HUMAN RIGHTS -- A PILLAR OF THE COE

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SBU - NOT FOR INTERNET DISSEMINATION.

#### Summary

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¶1. (SBU) The Commissioner for Human Rights of the Council of Europe (COE) focuses on national and international trends in the 47 COE member states. Publicizing systematic failures to uphold the European Convention for the Protection of Human Rights and promoting the role of national courts and ombudsmen, the Commissioner communicates through reports and "viewpoints," based partially on country visits. Thomas Hammarberg, the current Commissioner, has recently used such statements to encourage European states, with some success, to accept former Guantanamo detainees and to lobby for United States ratification of the Rome Statute on the International Criminal Court. Hammarberg has also sought to promote the "right of return" of refugees and IDPs in Georgia. Hammarberg's next reports will focus on Turkey and Russia. End summary.

#### Background

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¶2. (U) Designed as an independent watchdog institution within the Council of Europe, the office of Commissioner for Human Rights was created in 1999. Elected by a majority vote of the Parliamentary Assembly of the COE, the second and current Commissioner, Thomas Hammarberg of Sweden, assumed the role in ¶2006.

¶3. (U) The Commissioner's mandate complements the work of the European Court of Human Rights. However, the position is non-judicial. The Commissioner may not respond to individual complaints against member states, as can the Court. With reliable information provided by country visits, other human rights monitoring mechanisms, and the specialized offices of the United Nations, the Commissioner launches wider investigations into the any of the COE's 47 member states. Unlike the rulings of the European Court of Human Rights, none of the Commissioner's recommendations are binding. While the

Commissioner sometimes "names and shames" human rights violators in his reports, he prefers more subtle, "quiet diplomacy" to coax states toward compliance.

#### Mandate and activities

14. (U) In order to assist COE member states with the observance and implementation of Convention standards, the Commissioner relies on dialogue with governments and country visits. Dialogue with member state governments tends to be permanent and executed through member states' ambassadors in Strasbourg. When human rights violations appear systemic, the Commissioner may visit any of the 47 COE countries. Used as an information-gathering mechanism, these missions contribute to reports proposing structural reforms, presented to the Committee of Ministers, the Parliamentary Assembly, relevant NGOs and policy makers, and often the media.

15. (U) If ever ratified by Russia, Protocol 14 (reftel) will allow the Commissioner to intervene directly in certain Court hearings (at the Chamber level) and to submit friend of the court briefs in such cases.

16. (U) Though designed to act "independently and impartially," the Commissioner's office rests within the COE bureaucracy. The Parliamentary Assembly and the Committee of Ministers may request a report on a given European human rights issue or on the situation in a specific member state. Additionally, the

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Office of the Commissioner for Human Rights, as a part of the Council of Europe Secretariat, falls under the auspices of the Secretary General and Deputy Secretary General of the Council. The Secretary General prepares and allocates the Commissioner's budget, identifies Court of Human Rights cases in which the Commissioner should intervene as a third party, and coordinates the Commissioner's official visits.

#### Guantanamo

17. (SBU) In January, Commissioner Hammarberg devoted his bi-monthly "viewpoint" (a broad recommendation to the COE) to the closing of Guantanamo Bay, urging member states to accept some of the detainees held there. Of note are the several explicit condemnations of the United States that figured prominently in the report: "Those responsible for devising and approving the interrogation systems or those involved in sanctioning torture should be brought to justice ~ we should not forget that Guantanamo Bay may only be the tip of the iceberg when it comes to prisoners held beyond the rule of law by the United States." A June 5 letter to all Permanent Representatives to the COE following the Commissioner's visit to Washington once more encouraged European states to accept the detainees, and was considerably less critical of the U.S. Several ambassadors to the COE have told us that Hammarberg's work has helped convince their capitals to consider seriously accepting some of the detainees.

Georgia

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¶8. (SBU) Commissioner Hammarberg has visited Georgia four times since the conflict of August 2008 and in May 2009 released his most recent report on the ongoing human rights dilemma there. It was largely a reiteration of his "six principles": all citizens must be granted the right to return to their homes, care and support during reconstruction, protection from war, and protection against lawlessness; the rights of detainees must be ensured; international humanitarian groups must be granted access to the conflict areas. The continued failure to meet these standards falls on both camps, according to Hammarberg, particularly the restriction of access of humanitarian aid. The Commissioner pleaded for the two parties to delink the political issue of status of South Ossetia and Abkhazia from the international humanitarian effort. The COE views Hammarberg's work as complementary to the EUMM; indeed, some contacts note that Hammarberg is one of the few figures who can talk to all sides in the conflict. Hammarberg himself has expressed frustration, however, at not having full access to all conflict zones in Georgia.

Serbia and Kosovo

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¶9. (U) In March 2009, Commissioner Hammarberg released the follow-up report to his October 2008 visit to assess the human rights situation in Serbia. Reticent on the issue of Kosovo independence, the Commissioner did note the weakening support for (and even outright attacks on) NGOs encouraging democratic consolidation within Serbia since the unilateral declaration. He also noted the apparently stalled progress on returns of internally displaced persons from the Kosovo war, particularly Roma; between "an uncertain future in Kosovo and considerable obstacles to integrate into Serbian society," they are in many ways "stuck."

¶10. (SBU) The Commissioner's recent report on the human rights situation in Kosovo itself was critical. He painted Kosovo's public institutions, especially its judiciary, as weak and corrupt. The Commissioner's Chief of Staff indicated that Kosovo membership in the COE was politically difficult given the number of COE member states that have not recognized Pristina. The official added that Kosovo's authorities will probably have

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to address its shortcomings vis-à-vis the European Convention on Human Rights before it could even be considered a potentially viable candidate.

ICC

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¶11. (U) Hammarberg's June 22, 2009 "viewpoint" invited European countries to defend the International Criminal Court and to request that the USG withdraw the "idea of impunity" for its nationals. Acknowledging the "encouraging steps" taken by the Obama Administration (renunciation of torture, closing of Guantanamo), the Commissioner called for the United States to ratify the Rome Statute.

Current Focus: Turkey and Russia

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¶12. (U) Following a country visit to Turkey at the end of June 2009, Hammarberg will release two reports in the coming weeks, one on Turkey's minority rights situation and the other concerning its treatment of asylum seekers and immigrants. He will travel to Russia in September to investigate various human rights concerns there, particularly those in the Northern Caucasus.

Comment

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¶13. (SBU) Almost all of our contacts have described Hammarberg's most effective tool as "quiet diplomacy." His office is one of the most respected parts of the COE. On Guantanamo, Hammarberg mixes his power of quiet persuasion at (according to his Chief of Staff) almost every meeting with member state officials with his more public letters. He will not shy away from criticism of the U.S., however, and will continue to call for the abolition of the death penalty.

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